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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,551	03/26/2001	Thomas G. Feldpausch	FEL07 P-300	9372

277 7590 02/27/2003

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SF

## Office Action Summary

	Application No. <b>09/817,551</b>	Applicant(s) <b>Thomas G. Feldpausch et al.</b>
	Examiner <b>YVONNE M. HORTON</b>	Art Unit <b>3635</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Dec 2, 2002

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4)  Claim(s) 1-7, 9-15, 17, 18, 20-25, and 27 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 12, 14, 18, 20, and 27 is/are allowed.

6)  Claim(s) 5, 9, 10, 13, 15, 17, and 21-25 is/are rejected.

7)  Claim(s) 1-4, 6, 7, and 11 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

Art Unit: 3635

## DETAILED ACTION

### *Withdrawal of Allowable Subject Matter*

1. The indicated allowableness of claims 9, 13 and 23-25 is withdrawn in view of the newly discovered reference(s) to COULBURN, CLEVELAND, CARTER and POWERS. Rejections based on the newly cited reference(s) follow.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 stands and claims 5 and 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 5, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

5. Claim 10 recites the limitation "the holding arrangement" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3635

*Cancelled*

6. Regarding claim 21, the phrase "fence-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "fence-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim ~~15~~ is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #3,810,482 to BEAVERS. BEAVERS discloses an erectable structure (10) including a bottom expandable/collapsible (12) having an bottom internal frame (16L,R,B) and a bottom flexible cover (68); sides (16L); and a top expandable/collapsible frame (12) including internal frame (16T), a plurality of jointed (22, J) radial members (20), and a top flexible top cover (14), see the marked attachment; wherein the top cover (14) includes an opening (18) having a lower edge ((66) disposed partially upward to form a "window". The bottom cover (68) has a bottom edge which is the undersurface of the bottom cover (68); wherein the bottom edge contacts the ground surface, see figure 2, and the bottom frame (16L,R,B) includes ground engaging means (GE), see the marked attachment. The structure is such that nothing but the ground engaging means (GE) and the bottom edge contacts the ground.

9. Claims ~~23~~ and ~~24~~ are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #1,666,757. The structure of SNYDER inherently discloses the method of quickly erecting a

Art Unit: 3635

structure wherein the steps include providing an expandable/collapsible structure (10) including a bottom frame (11,20,35,41) attached to a top frame (12), a near corner (N1) and two far corners (F2). The structure (10) of SNYDER inherently discloses grasping and throwing the far corners (F2) away from the near corner (N1) and grasping and lifting the top frame (12), see figure 2. In reference to claim 24, the steps of grasping and lifting are independent.

10. Claim ~~25~~ is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #6,070,604 to CARTER. The structure of CARTER inherently discloses the method of providing an expandable/collapsible structure (10) having a top apparatus (47a) and a bottom apparatus (18) including a scissor frame with top edges (T), bottom edges (B), near corners (N) and far corners (F); lowering and collapsing the top apparatus (47a) wherein the top apparatus (47a) acts as a roof over a top geometric shape (12) to a storage position within the bottom frame (18), see figure 1; and collapsing the bottom apparatus (18) where the bottom (18) forms a an expanded shape, similar to that shown in figure 3, to a collapsed position. The steps of grasping the corners while standing on an outside of the structure (10) are inherent in considering the dynamics of the structure of CARTER.

11. Claim ~~17~~ is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #2,864,389 to SMITH et al. SMITH et al. discloses an erectable structure including a bottom expandable/collapsible frame (16,17) having a bottom internal frame (16) and flexible cover (10); and a top expandable/collapsible frame including internal frame (21), a plurality of jointed radial members (R), and a flexible top cover (10). The top internal frame (21) includes

Art Unit: 3635

secondary members (R) pivotally connected to the peak members (21) and includes a retainer

(20) drawstring (27,37) wherein the drawstring (27) includes a knob (27), see the marked

attachment, and a retainer (51) for holding the drawstring (27) once tensioned, column 2, lines

57-61.

#### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,810,482 to BEAVERS in view of US Patent #4777,755 to COULBURN. BEAVERS discloses an erectable structure (10) including a bottom expandable/collapsible (12) having an

Art Unit: 3635

bottom internal frame (16L,R,B) and a bottom flexible cover (68); sides (16L); and a top expandable/collapsible frame (12) including internal frame (16T), a plurality of jointed (22, J) radial members (20), and a top flexible top cover (14), see the marked attachment; wherein the top cover (14) includes an opening (18) having a lower edge ((66) disposed partially upward to form a "window". BEAVERS discloses the basic claimed structure except for explicitly detailing the use of a holding arrangement for the partially upward lower edge. COULBURN teaches that it is known in the art to provide the bottom edge of a cover (36) with a holding arrangement (190,192). Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of BEAVERS with the holding arrangement of a COULBURN in order to securely maintain the lower edge of the cover in an open position.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,810,482 to BEAVERS in view of either US Patent #4,129,139 to POWERS or US Patent #5,010,909 to CLEVELAND. BEAVERS discloses an erectable structure (10) including a bottom expandable/collapsible (12) having an bottom internal frame (16L,R,B) and a bottom flexible cover (68); sides (16L); and a top expandable/collapsible frame (12) including internal frame (16T), a plurality of jointed (22, J) radial members (20), and a top flexible top cover (14), see the marked attachment; wherein the top cover (14) includes an opening (18) having a lower edge ((66) disposed partially upward to form a "window". BEAVERS discloses the basic claimed structure except for explicitly detailing the use of a carrying sleeve. Both POWERS and

Art Unit: 3635

CLEVELAND teach the use of a telescoping carrying sleeve (70) and (13); respectively, wherein each of the sleeves (70) and (13) includes a shoulder strap (72) and (S), see the marked attachment. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of BEAVERS with the carrying sleeve of either POWERS or CLEVELAND in order to facilitate an ease of storing and transporting the structure.

16. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #1,666,757 to SNYDER. The structure of SNYDER inherently discloses the method of quickly erecting a structure wherein the steps include providing an expandable/collapsible structure (10) including a bottom frame (11,20,35,41) attached to a top frame (12), a near corner (N1) and two far corners (F2). SNYDER discloses the basic claimed method except for explicitly detailing how the frame is grabbed and position in order to facilitate erection. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the structure (10) of SNYDER obviously discloses the steps of grasping and throwing the far corners (F2) away from the near corner (N1) and grasping and lifting the top frame (12), see figure 2. In reference to claim 24, it would also be obvious that the steps of grasping and lifting are independent.

Art Unit: 3635

***Allowable Subject Matter***

17. Claims 1-4,6-7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
18. Claims 12,14,18,20 and 27 are allowed.
19. Claims 5,10 and 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
20. Claim 21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Response to Arguments***

21. Applicant's arguments with respect to claims 9,13,15 and 23-25 have been considered but are moot in view of the new ground(s) of rejection or changes made in the previous Official Action.
22. Applicant's arguments filed 12/02/02 have been fully considered but they are not persuasive. In regards to the applicant's argument that SMITH et al. does not include all of the elements of the claimed invention, the rejection has been modified to further detail the claimed members. The applicant has not identified exactly which elements he feels that SMITH et al. does not teach. However, in reference to the applicant's argument that SMITH et al. teaches

Art Unit: 3635

away from the instant application due to the fact the SMITH et al. employs the use of a pole, a prior art reference is allowed to have additional elements as long as the claimed elements are present the reference is still prior art and applicable. Further, there is no requirement in the instant applicant to not include any such center pole.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH



February 21, 2003

April 17, 1928.

1,666,757

H. F. SNYDER

COLLAPSIBLE TENT

Filed May 6, 1925

3 Sheets-Sheet 1

FIG. 1

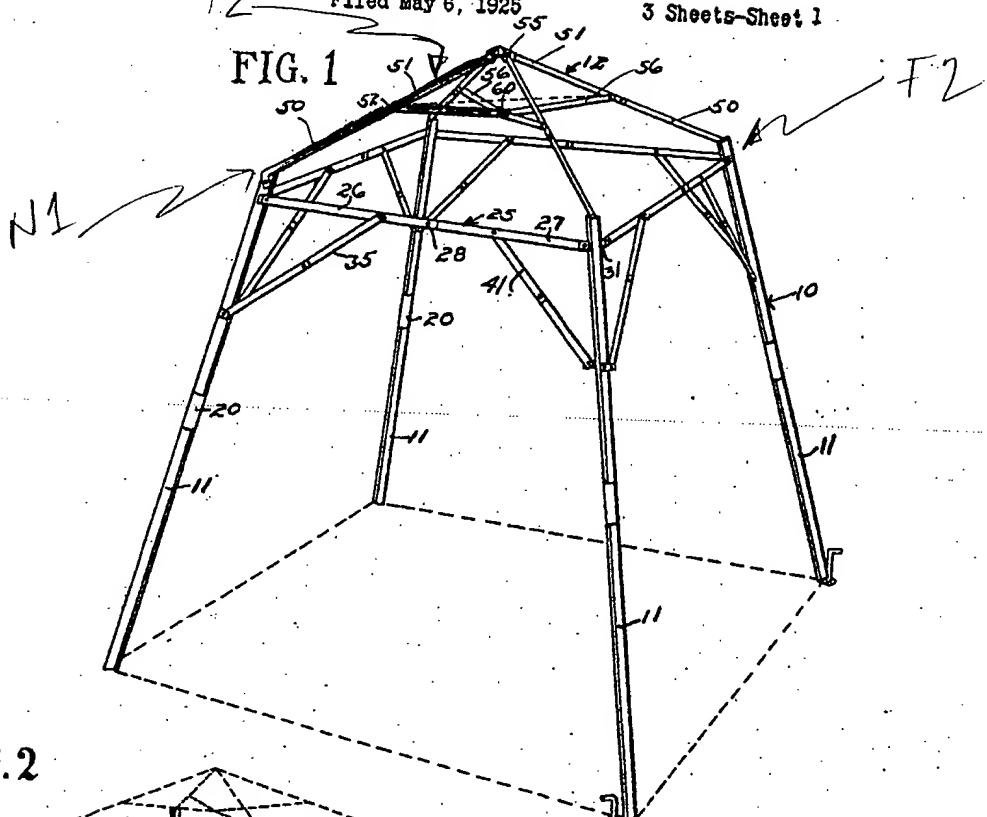
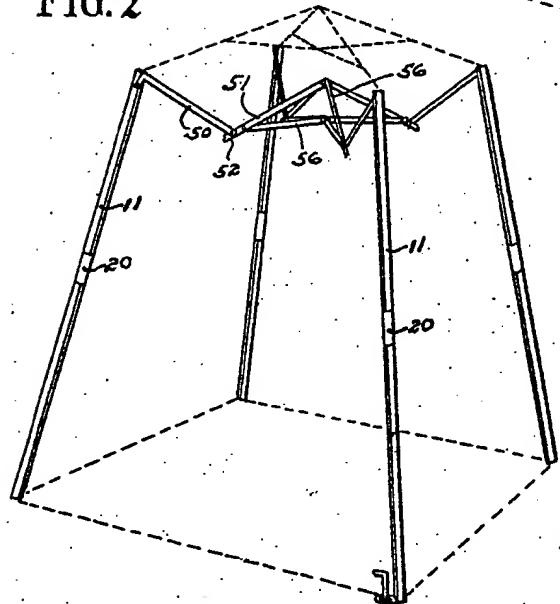


FIG. 2



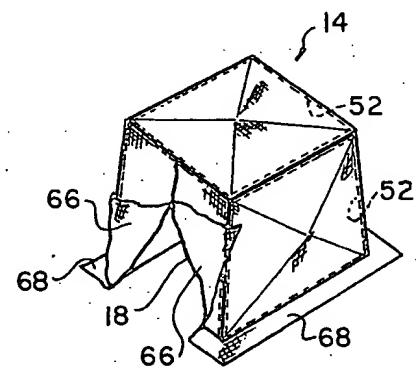
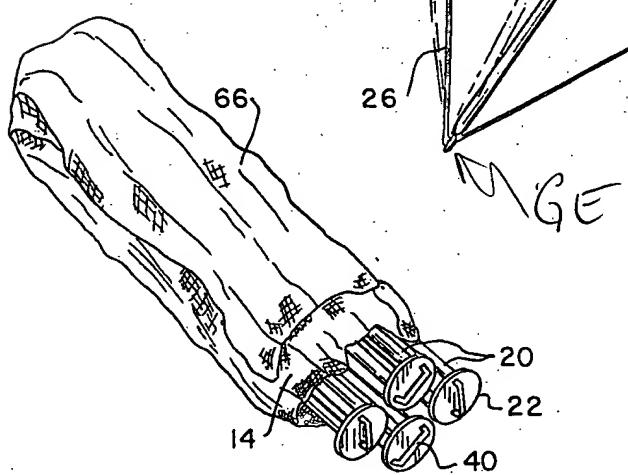
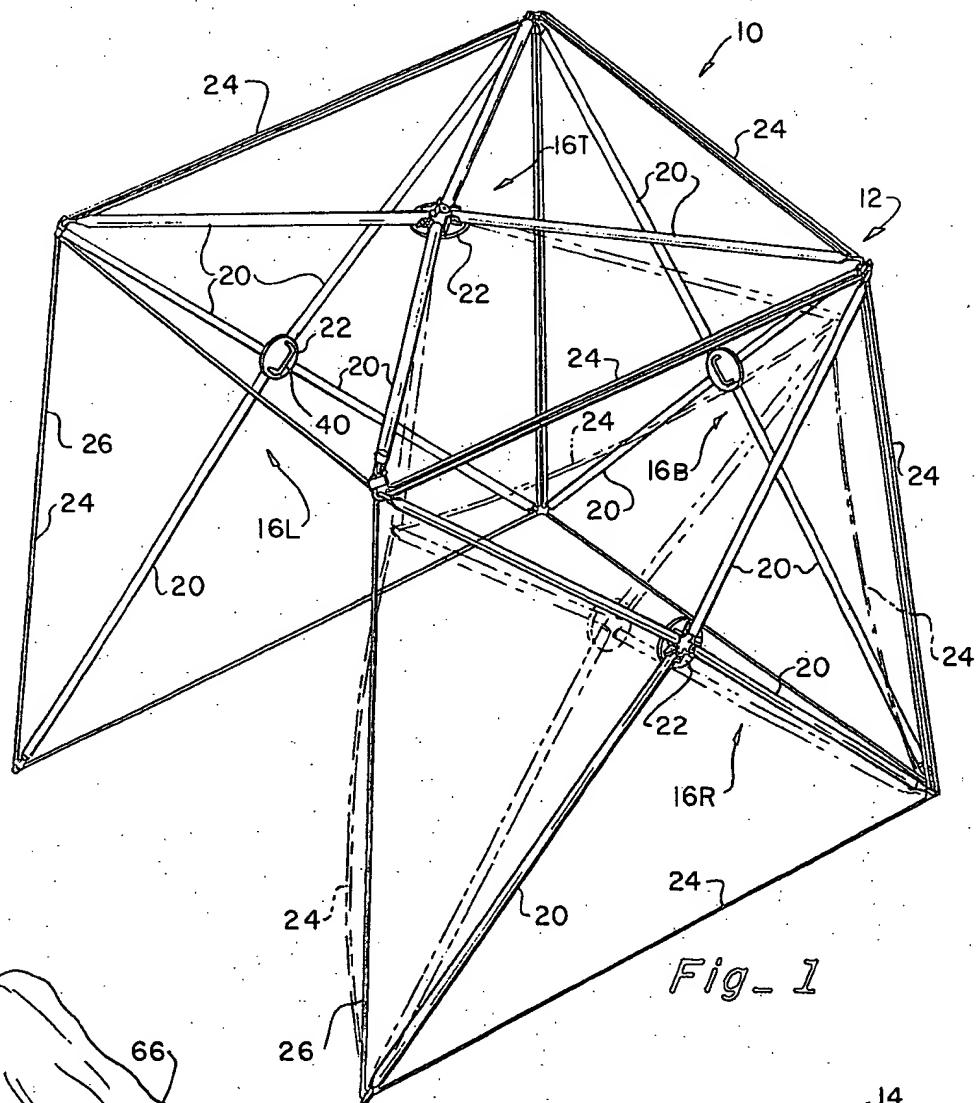
INVENTOR

HARRY F. SNYDER  
By  
P. J. Craig,  
ATTORNEY.

PATENTED MAY 14 1974

3,810,482

SHEET 1 OF 2



Dec. 16, 1958

M. B. SMITH ET AL

2,864,389

UMBRELLA TENT

Filed April 9, 1956

3 Sheets-Sheet 1

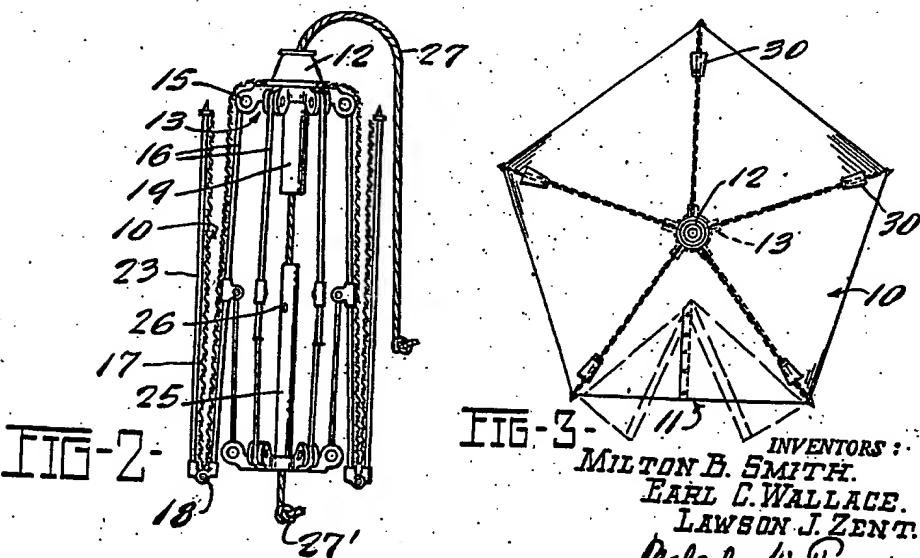
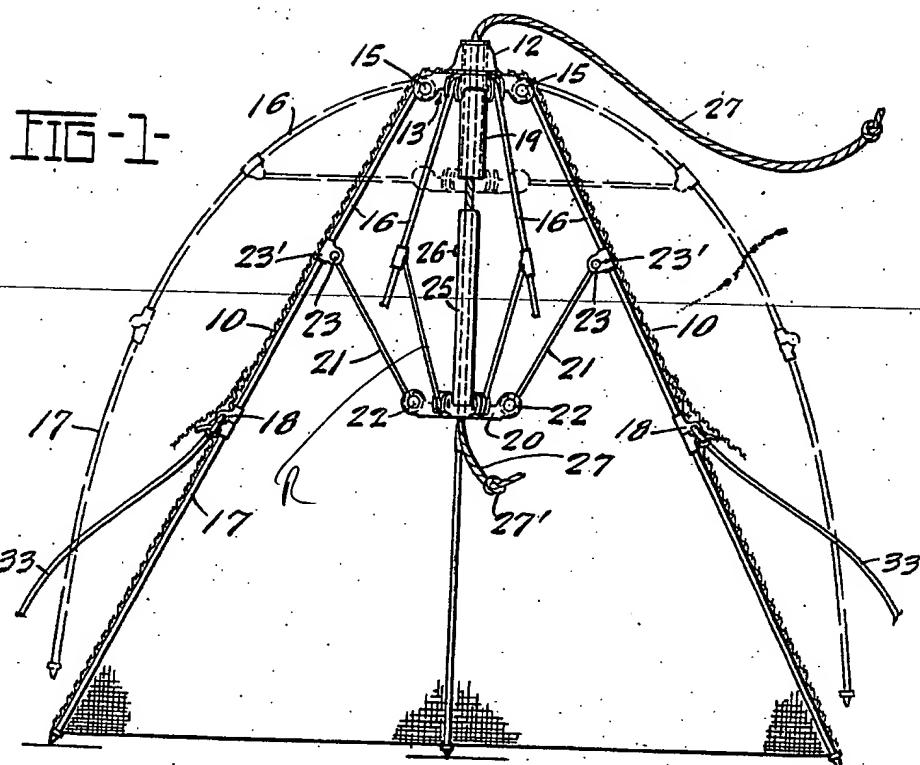


FIG-3-

INVENTORS:  
MILTON B. SMITH.  
EARL C. WALLACE.  
LAWSON J. ZENT.  
Malcolm W. Chase  
ATTY.

FIG. 3

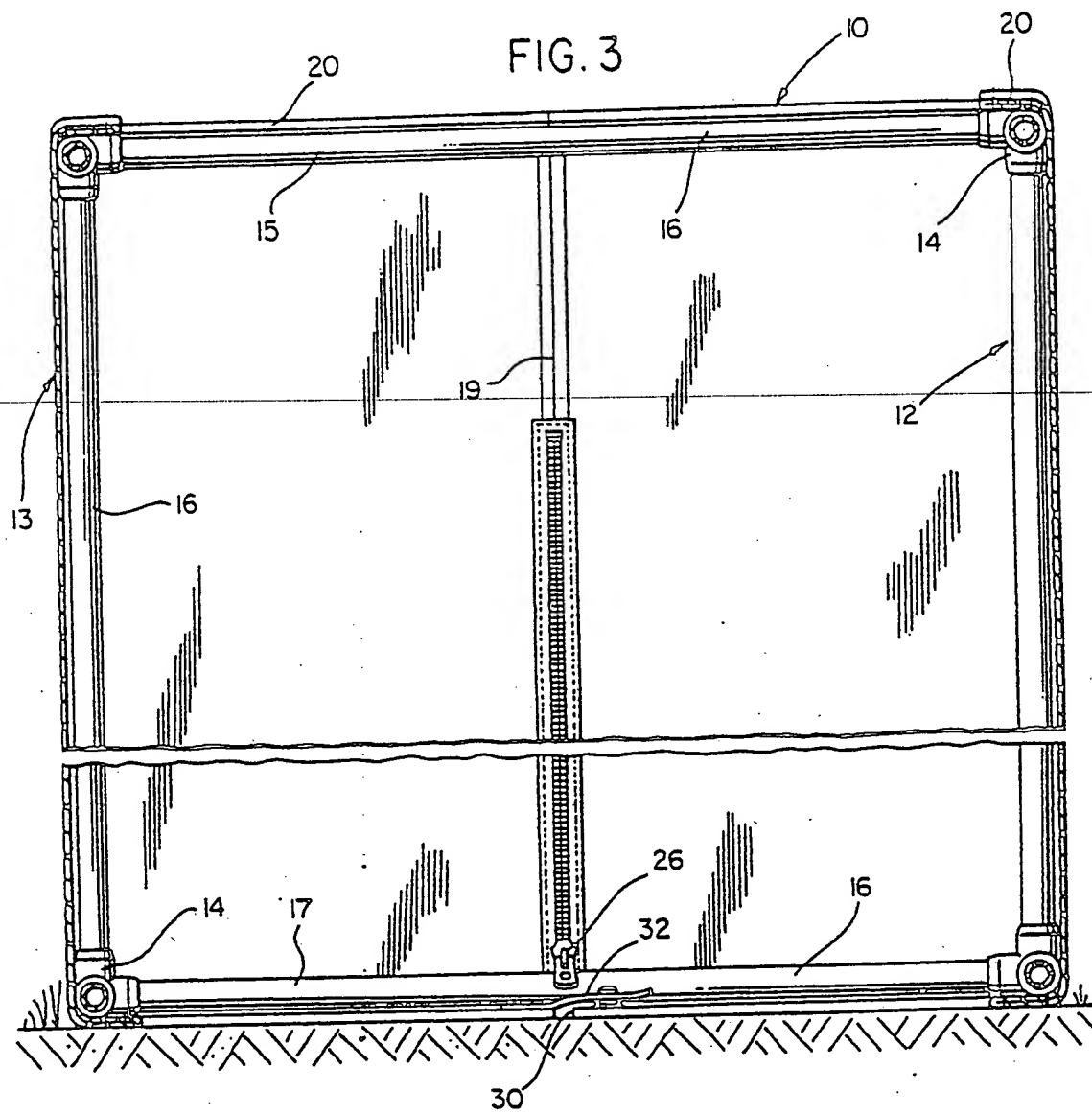
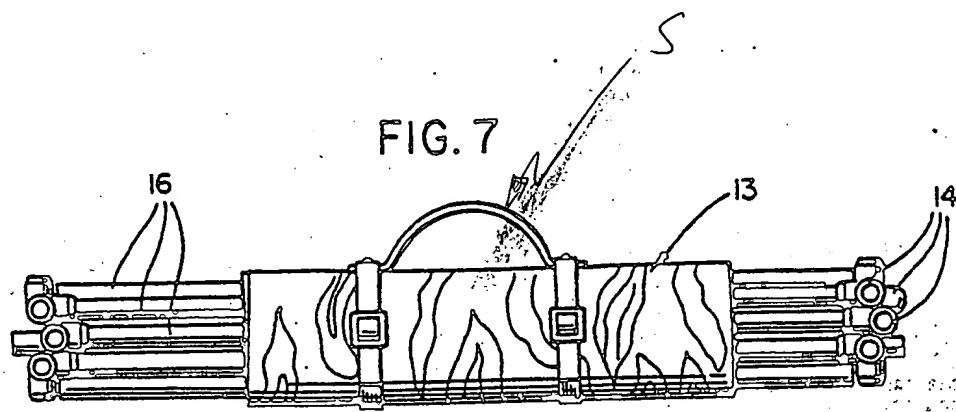


FIG. 7



United States Patent [19]  
Carter

[11] Patent Number: 6,070,604  
[45] Date of Patent: Jun. 6, 2000

[54] ERECTABLE SHELTER WITH  
COLLAPSIBLE CENTRAL ROOF SUPPORT

[76] Inventor: Mark C. Carter, 1601 Iowa Ave.,  
Riverside, Calif. 92507

[21] Appl. No.: 09/130,774

[22] Filed: Aug. 7, 1998

[51] Int. Cl.<sup>7</sup> E04H 15/50

[52] U.S. Cl. 135/145; 135/131; 135/140;  
135/151; 135/114; 403/109.1

[58] Field of Search 135/128, 130-131,  
135/140-145, 114, 147, 151-153, 97, 905,  
139; 403/109.1, 109.2, 109.8, 119, 161-163,  
308, 327

[56] References Cited

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4,947,884 8/1990 Lynch .  
5,485,863 1/1996 Carter 135/145

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WO 92/12313 7/1992 WIPO .  
WO 96/41928 12/1996 WIPO .

Primary Examiner—Carl D. Friedman

Assistant Examiner—Winnie Yip

Attorney, Agent, or Firm—James W. Paul; Fulwider Patton  
Lee & Utecht, LLP

[57] ABSTRACT

The erector, collapsible shelter has a canopy with at least

three sides and three corners, a leg assembly, and a perimeter truss linkage assembly having a plurality of perimeter truss pairs of link members connected to the leg assembly. The legs preferably have telescoping upper and lower sections with lower section for engagement with ground, and a slider member slidably mounted to the upper section of each of the legs. A canopy peak support assembly is provided that is movable between a raised position and a lowered position, with the canopy peak support assembly supporting the canopy above the top of the leg assembly in the raised position. The telescoping pole members comprise hollow first and second telescoping sections, with the second telescoping section having a spring loaded detent pin and an aperture for receiving the spring loaded detent pin, and the first telescoping section having a corresponding medially located aperture located medially of the proximal end for receiving the spring loaded detent pin, whereby when the apertures of the first and second telescoping sections are aligned, the first and second telescoping sections are locked together by the detent pin. A weighted internal stop member is slidably disposed within the first telescoping section for movement between a first position blocking the detent pin when the first telescoping section is below the second telescoping section and a second position not blocking the detent pin when the first telescoping section is above the second telescoping section. A second, proximal aperture is provided in the first telescoping section for receiving the spring loaded detent pin proximal to the medially located aperture, and a ramped channel for receiving the detent pin, such that when the detent pin is received in the second aperture, the detent pin locks the first and second telescoping sections from being disengaged, but the detent pin can slide distally from the second aperture along the channel.

13 Claims, 4 Drawing Sheets

